

LAW OFFICES  
**BILLIG, SHER & JONES, P. C.**  
SUITE 300  
2033 K STREET, N.W.  
WASHINGTON, D. C. 20006

JACOB P. BILLIG  
TERRENCE D. JONES  
STANLEY O. SHER  
DAVID C. JORDAN  
JOHN R. ATTANASIO  
MARC J. FINK

TEL. (202) 223-8270  
CABLE: BISJO  
TELEX: 89-569

February 23, 1979

RECORDATION NO. .... Filed 1425

BY HAND

FEB 23 1979-2 40 PM

INTERSTATE COMMERCE COMMISSION

NO.

Date

Fee \$

FEB 23 1979

ICC Washington, D. C.

Hon. H. Gordon Homme, Jr.  
Secretary  
Interstate Commerce Commission  
Room 2215  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

RECORDATION NO. 10135 Filed 1425

FEB 23 1979-2 40 PM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Homme:

Please accept for recordation pursuant to §11303 of the Interstate Commerce Act, 49 U.S.C. §11303 (formerly 49 U.S.C. §20c), the following Lease Agreement between PLM Railcar Management, Inc. and The Western Pacific Railroad Company.

LESSOR: PLM RAILCAR MANAGEMENT, INC.  
50 California Street, 33rd Floor  
San Francisco, California 94111

LESSEE: THE WESTERN PACIFIC RAILROAD COMPANY  
526 Mission Street  
San Francisco, California 94105

DESCRIPTION: 240 100-ton hopper railcars, bearing A.A.R. designations WP-70001 through WP-70240, inclusive.

Thank you for your assistance.

Yours very truly,

Terrence D. Jones

TDJ/mne

RECEIVED  
FEB 23 2 36 PM '79  
I.C.C.  
FEE OPERATION BR.

*Counterparts to J.D. Jones*

# Interstate Commerce Commission

Washington, D.C. 20423

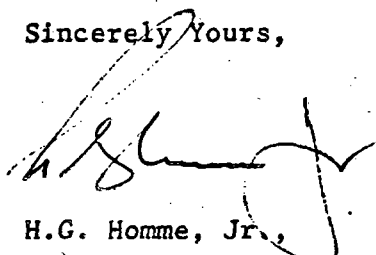
OFFICE OF THE SECRETARY

Terrence D. Jones  
Billig, Sher & Jones, P. C.  
Suite 300  
2033 K Street, N. W.  
Washington, D.C. 20006

Dear Mr. Jones:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on February 23, 1979 at 2:40 PM , and assigned recordation number(s) 10135 and 10135-A

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

FEB 23 1979 - 2 40 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED

NOV - 8 1978

V.P. - FINANCE

LEASE AGREEMENTFORRAILROAD CARS

This Lease Agreement entered as of the 3rd day of November, 1978 (hereinafter called "the Agreement"), by and between PLM Railcar Management, Inc., a California corporation ("RMI"), a wholly-owned subsidiary of PLM, Inc., and The Western Pacific Railroad Company, a corporation (hereinafter called "Lessee").

RECITALS

RMI is entering into this Agreement for its own account and/or as agent for, and to the extent of, the principals set forth on the attached Exhibit A. The principals set forth on Exhibit A have entered into management agreements with RMI, a form of which is attached hereto as Exhibit B ("the management agreement"), which authorizes RMI to enter into this Agreement on their behalf. RMI and such principals are collectively referred to as "Lessor." The parties hereto recognize and acknowledge that RMI may add principals to Exhibit A at any time and from time to time in its sole discretion. In such event, RMI shall deliver to Lessee an amended Exhibit A which, upon delivery, shall be incorporated into this Agreement; provided, however, that notwithstanding the date an amended Exhibit A is delivered to Lessee, such principal shall be a Lessor hereunder effective as of the date the cars owned by the principal and managed by RMI are delivered to Lessee.

ACCORDINGLY, IT IS AGREED AS FOLLOWS:

ARTICLE ILEASE

Lessor shall furnish and lease to Lessee, and Lessee shall accept and use, on the terms and conditions set forth herein, the railroad cars (such railroad cars being hereinafter collectively referred to as the "cars" and separately as a "car") which are described more particularly in the attached Exhibit C.

## ARTICLE 2

### TERM

The term of this Agreement with respect to a car shall commence upon the initial delivery of such car to Lessee in the manner set forth in Article 3 and, except as otherwise provided in Article 9B, hereof, shall terminate on the earlier of the loss or destruction of such car or, with respect to all cars leased hereunder, at the end of three years from the first day of the calendar month immediately following the month in which the first of the cars leased hereunder is delivered to Lessee or March 31, 1982, whichever date occurs first; provided, however, that without limiting any other rights Lessor may have against Lessee, if Lessee is responsible for such loss or destruction of a car under Article 9A, this Agreement with respect to such car shall continue until Lessee pays to Lessor the fair market value of such car as determined immediately prior to such loss or destruction. In the event of such loss or destruction for which Lessee is responsible under Article 9A, rental shall cease to accrue upon payment to Lessor of the settlement value of such car as determined pursuant to Rule 107 of the Interchange Rules (described hereinafter); however, Lessee shall be obligated to pay an additional amount equal to the amount, if any, by which the fair market value of such car (determined pursuant to Article 10 hereof) exceeds such settlement value, together with interest on such excess amount at a rate of 10% per annum (such rate reduced, however, to the extent it exceeds the maximum rate permitted by law) accruing from the date of receipt by Lessor of such settlement value until the date of receipt by Lessor of such excess amount.

## ARTICLE 3

### DELIVERY

#### A. Date of Delivery

Lessor shall deliver or cause the cars to be delivered to Lessee during the delivery period set forth on Exhibit D. The obligation of Lessor to deliver the cars shall be excused for any causes beyond the reasonable control of Lessor (including a delay in delivery caused by the late delivery by another lessee), and in the event of a delay in such delivery, Lessor shall deliver the cars to Lessee as soon as reasonably possible thereafter.

#### B. Place of Delivery

Lessor shall cause the cars to be delivered to Lessee at Alliance, Nebraska or such other location or locations as shall be specified by Lessee prior to the commencement of the term.

#### C. Acceptance of Cars

Upon delivery, Lessee shall promptly inspect each car and shall accept such car if it (i) complies with the description set forth in the attached Exhibit C, (ii) complies with

all Department of Transportation and Interstate Commerce Commission requirements and specifications and (iii) is fit and suitable for operation as those terms are defined in the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads (the "Interchange Rules"). In addition to any other rights Lessee may have, Lessee shall have the right to conduct its inspection hereunder at the manufacturer's plant. Upon acceptance, Lessee shall deliver to Lessor a Certificate of Acceptance in the form attached hereto as Exhibit G. Notwithstanding the foregoing, Lessee shall be deemed to have accepted any car delivered hereunder if, with respect to such car, the Lessee shall (i) load, or otherwise use the car, or (ii) fail to notify Lessor in writing, within five (5) days after delivery of its rejection of the car and the specific reasons why the car does not meet the applicable standards set forth herein. If Lessee rejects any car, Lessor shall have the right to have the rejected car inspected at Lessee's expense by an inspector acceptable to both Lessor and Lessee. The Lessee shall be deemed to have accepted any car for which the inspector determines that good cause for rejection did not exist. The decision of the inspector shall be final and binding upon the parties. The Lessee's acceptance, however effected, shall be deemed effective as of the delivery date. Such acceptance shall conclusively establish that such cars conform to the applicable standards set forth herein.

#### D. Cost of Delivery

Lessor shall pay the cost, if any, of the initial delivery of the cars to Alliance, Nebraska, or to another location or locations (as provided in Article 3.B. hereof) to the extent such cost equals the cost which would have been incurred in delivering the cars to Alliance, Nebraska.

### ARTICLE 4

#### MARKINGS

At the time of delivery of the cars by Lessor to Lessee, the cars will be plainly marked on each side with the reporting marks of Lessee. If such markings shall at any time be removed or become illegible, wholly or in part, Lessee shall immediately cause such markings to be restored or replaced at Lessee's expense. Lessee shall not otherwise place, nor permit to be placed, any lettering or marking of any kind upon the cars without Lessor's prior written consent, which consent shall not unreasonably be withheld.

### ARTICLE 5

#### PAYMENT OF RENTALS; OPINION OF COUNSEL

#### A. Monthly Rentals

The monthly rental with respect to each car shall be as set forth in Exhibit D, and, subject to Article 2, shall accrue from (and including) the date of delivery to (and excluding) the date a car is redelivered in accordance with Article 17. The rental shall be payable in advance on or before the first day of each month during the term hereof

(with respect to each car which has been delivered) except as hereinafter provided. Lessee shall pay to Lessor, with respect to each car which has been delivered, the pro rata monthly rental rate times the number of days (including the day of delivery) remaining in the month of delivery, within ten days after delivery. The next succeeding monthly rental shall be paid on the later of the first day of the next succeeding calendar month or the tenth day after delivery of such car, and thereafter Lessee shall pay the monthly rental in advance for each car on or before the first day of each month during the term hereof (as hereinabove provided).

**B. Opinion of Lessee's Counsel**

Lessee on or before the execution of this Agreement shall furnish to Lessor an opinion of Lessee's counsel, satisfactory to counsel for Lessor and in form and substance satisfactory to such counsel, that as of the date of the Agreement:

(a) Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of California or Delaware, as the case may be, and is either duly qualified to do business and is in good standing in such other jurisdictions in which the business and activities of Lessee require such qualification or its failure to so qualify in such other jurisdiction will not have a material adverse impact on this Agreement.

(b) Lessee has full corporate power to enter into this Agreement.

(c) The Agreement had been duly authorized, executed and delivered by Lessee, and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms.

(d) No approval is required by Lessee from any governmental or public body or authority with respect to the entering into or performance of this Agreement.

(e) The entering into and performance of this Agreement will not conflict with, or result in a breach of, the terms, conditions or provision of any law, or any regulations, order, injunction, permit, franchise or decree of any court or governmental instrumentality.

(f) The entering into and performance of this Agreement will not conflict with, or result in a breach of, the terms, conditions or provisions of any indenture, agreement or other instrument to which Lessee is party or by which it or any of its property is bound.

(g) Lessee is neither an organization described in Section 48(a)(4) nor a governmental unit described in Section 48(a)(5) of the Internal Revenue Code of 1954, as amended.

C. Opinion of RMI's Counsel

RMI on or before the execution of this Agreement shall furnish to Lessee an opinion of RMI's counsel, satisfactory to counsel for Lessee and in form and substance satisfactory to such counsel, that as of the date of the Agreement:

(a) RMI is a corporation duly incorporated, validly existing and in good standing under the laws of the State of California and is either duly qualified to do business and is in good standing in such other jurisdictions in which the business and activities of RMI require such qualification or its failure to so qualify in such other jurisdiction will not have a material adverse impact on this Agreement.

(b) RMI has full corporate power to enter into this Agreement.

(c) The Agreement has been duly authorized, executed and delivered by RMI and, to the extent RMI enters into this Agreement as principal, constitutes a valid, legal and binding agreement of RMI, enforceable against RMI in accordance with its terms.

(d) No approval is required by RMI from any governmental or public body or authority with respect to the entering into or performance of this Agreement.

(e) RMI is neither an organization described in Section 48(a)(4) nor a governmental unit described in Section 48(a)(5) of the Internal Revenue Code of 1954, as amended.

ARTICLE 6

CAR HIRE PAYMENTS

Any per diem or mileage allowances, rentals, demurrage and/or other compensation payable by railroads (other than Lessee) by reason of the use of the cars (hereinafter referred to as "allowances") shall be collected by and shall constitute the property of Lessee. Any allowances paid to Lessor shall be immediately paid to Lessee.

ARTICLE 7

CAR ALTERATIONS

Lessee shall not alter the physical structure of any of the cars without the prior written approval of Lessor.

## ARTICLE 8

### MAINTENANCE AND REPAIRS

Lessee shall, at its expense, maintain the cars in good condition and repair according to the Interchange Rules hereinafter mentioned.

## ARTICLE 9

### LOSS OR DAMAGE

#### A. Responsibilities

Lessee shall be responsible for the loss or destruction of, or damage to, the cars or parts thereof, during the term except to the extent the then-prevailing Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads (herein called the "Interchange Rules") places responsibility upon another railroad subscribing to the Interchange Rules; provided, however, that Lessee shall not be responsible if such loss, destruction or damage to the cars or parts thereof or appurtenances thereto was caused by the sole active negligence or willful misconduct of Lessor.

Notwithstanding anything contained herein to the contrary, Lessee shall be responsible for the loss or destruction of, or damage to, a car or part thereof during the term while such car is on the tracks of Lessee or any private track, or on the track of any railroad that does not subscribe to the Interchange Rules or in the event that any car is damaged by any commodity which may be transported or stored in or on such car.

#### B. Substitution or Repair

Lessee shall notify Lessor of the loss or destruction of any of the cars promptly upon becoming aware of such event. If a car is lost or destroyed, and Lessor is responsible for such loss or destruction, Lessor shall, at its option, have the right to (i) substitute for such car another car of the same type, capacity and condition, or (ii) withdraw the car from this Agreement and, therefore, reduce the number of cars leased hereunder; provided, however, that the rental rate for a substituted car for each month after a car is delivered to Lessee shall be determined in accordance with Exhibit D.

## ARTICLE 10

### INDEMNIFICATION BY LESSEE: DAMAGES, LOSSES AND INJURIES

Lessee shall defend (if such defense is tendered to Lessee), indemnify and hold Lessor harmless from and against and does hereby release Lessor from, all claims, suits,



liabilities, losses, damages, costs and expenses, including attorneys' fees, in any way arising out of or resulting from the condition, storage, use, loss of use, or operation of the cars, even though the same may have resulted from Lessor's concurrent negligence, whether active or passive. In all cases to which this indemnity agreement applies, Lessee's obligation shall be to indemnify Lessor for the full amount of the claim, suit, liability, loss, damage, cost or expense involved, and principles of comparative negligence shall not apply.

If Article 9A places the responsibility for loss, destruction or damage to the car on Lessor, Lessee shall have no obligation to indemnify Lessor for the loss, damage or destruction of the car, but Lessee shall retain its obligation to indemnify Lessor for all other claims, suits, liabilities, losses, damages, costs and expenses.

Lessor and Lessee shall cooperate with and assist each other in any reasonable manner requested, but without affecting their respective obligations under this Article or Article 9, to establish proper claims against parties responsible for the loss or destruction of, or damage to, the cars.

For the purposes of this Agreement, the amount of loss resulting from the loss or destruction of a car shall be measured by its fair market value as determined immediately prior to the time of such loss or destruction, less any salvage value received by Lessor. Lessee is authorized to dispose of the salvage of any destroyed car, as the agent of Lessor.

Any controversy or claim relating to the determination of the fair market value of a car immediately prior to its loss or destruction shall be settled in San Francisco, California, by arbitration in accordance with the rules of the American Arbitration Association, and judgement upon any award rendered thereby may be entered in any court having jurisdiction thereof.

## ARTICLE 11

### LOSS OF COMMODITIES

Lessor shall not be liable for any loss of, or damage to, commodities, or any part thereof, loaded or shipped in the cars, however such loss or damage shall be caused, or shall result.

## ARTICLE 12

### LOSS OF USE OF CAR BY LESSEE

Lessor shall not be liable to Lessee for any damages, costs or losses which result from the loss of the use of the car for any reason whatsoever.

## ARTICLE 13

### TAXES AND OTHER CHARGES

Except as otherwise hereinafter provided, Lessee shall pay and indemnify and hold Lessor harmless from any and all taxes and other charges, including penalties and interest thereon, levied or imposed by any foreign, Federal, state or local government or taxing authority, railroad or other agency upon or with respect to the cars, or Lessor in connection with the cars or the lease thereof hereunder, including without limitation (i) personal property taxes imposed as a result of ownership or use of the cars, (ii) any taxes (withholding or otherwise) and penalties and interest thereon imposed by Canada or any province thereof or any governmental or administrative subdivision thereof, (iii) sales and/or use taxes, gross receipts, franchise and single business taxes, except any tax imposed upon the original acquisition of the cars, and (iv) license fees, assessments, charges, fines, levies, imposts, duties, tariffs, customs, switching, and demurrage.

Notwithstanding the foregoing, Lessee shall not be responsible for and Lessor shall pay any tax imposed by the United States or any state or governmental subdivision thereof which is measured solely by Lessor's net income, unless such tax is in substitution for or releases Lessee from the payment of any taxes for which Lessee would otherwise be obligated under this Article 13.

## ARTICLE 14

### ASSIGNMENT, TRANSFERS, ENCUMBRANCES

#### A. Lessor's Rights to Assign or Transfer

All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, and/or Lessor may assign, pledge, mortgage, transfer or otherwise dispose of title to the cars, with or without notice to Lessee. In the event of any such assignment, pledge, mortgage, transfer or other disposition, this Agreement and all rights of Lessee hereunder or those of any person, firm or corporation who claims or who may hereafter claim any rights in this Agreement under or through Lessee, are hereby made subject and subordinate to the terms, covenants and conditions of any chattel mortgage, conditional sale agreement, equipment trust agreement or other agreements or assignments covering the cars heretofore or hereafter created and entered into by Lessor, its successors or assigns, and to all of the rights of any such chattel mortgagee, assignee, trustee or other holder of legal title to the cars; provided, however, that so long as Lessee is not in default hereunder Lessor shall continue to perform its obligations hereunder, and Lessee shall be entitled to use the cars in accordance with the terms and conditions hereof. Any sublease or assignment of the cars permitted by this Agreement that is entered into by Lessee or its successors or assigns shall contain language which expressly makes such assignment or sublease subject to the subordination contained herein. At the request of Lessor or any chattel mortgagee, assignee, trustee, or other holder of the legal title to or security interest in the cars, Lessee at Lessor's expense shall letter or mark the cars to identify the legal owner of the cars and, if applicable, place on each side of each car, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words reasonably requested.

In the event that Lessor assigns its interest in this Agreement, Lessee, at the request of Lessor, shall execute and deliver to Lessor an Acknowledgement of Assignment of Lease similar in form to the attached Exhibit E and upon such request and execution, furnish to Lessor an opinion of counsel that such Acknowledgement has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding instrument, enforceable in accordance with its terms.

B. Lessee's Rights to Transfer or Sublease

Lessee hereby acknowledges that RMI (or the principal or principals for whom RMI acts as agent) will claim with respect to the cars the investment tax credit allowable pursuant to Section 38 of the Internal Revenue Code of 1954, as amended (the "Code"), for "new Section 38 property" as defined in Section 48(b) of the Code. Lessee further acknowledges that an investment tax credit with respect to the cars would not be allowable in the taxable year claimed, or an investment tax credit previously claimed with respect to the cars would be recaptured, if the cars were to be used predominantly outside the United States within the meaning of Section 48(a)(2)(A) of the Code.

Lessee intends to use the cars entirely within the continental United States. Notwithstanding the foregoing, Lessee shall not use a car (nor permit a car to be used by a transferee, sublessee or assignee of Lessee) outside the continental United States more than an aggregate of 55 days during such calendar year (or a pro-rata portion thereof for a period of use of less than a full calendar year). Lessee shall not transfer, sublease, or assign the cars or its interest and obligations pursuant to this Agreement, nor shall a transfer, sublease or assignment by operation of law or otherwise of Lessee's interest in the cars or this Agreement be effective against Lessor, without Lessor's prior written consent. Nothing in this Agreement shall be deemed, however, to restrict the right of Lessee to assign or transfer its leasehold interest in the cars or possession of the cars to a corporation into which or with which Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as a whole or substantially as a Whole. No transfer, sublease or assignment of this Agreement, or of the cars, shall relieve Lessee from any of its obligations to Lessor under this Agreement.

Notwithstanding anything contained herein to the contrary, Lessee shall not permit the cars to be used by any organization described in Section 48(a)(4) of the Code or by a governmental unit described in Section 48(a)(5) of the Code.

Lessee shall be required to pay to Lessor (each principal for the purpose being treated as a separate Lessor) an amount which, after deduction of all taxes required to be paid by such Lessor in respect of all amounts payable by Lessee to Lessor hereunder, under the laws of any federal, state, or local government or taxing authority, shall be equal to all or such portion of the Investment Tax Credit disallowed or recaptured by or from Lessor as a direct or indirect result of Lessee's violation of this Article 14B.

## ARTICLE 15

### OWNERSHIP OF THE CARS

Lessee acknowledges and agrees that by the execution of this Agreement, it does not obtain and by payments and performance hereunder it does not and will not have or obtain any title to the cars or any property right or interest therein, legal or equitable, except solely as Lessee hereunder and subject to all of the terms hereof. Lessee shall keep the cars free from any liens or encumbrances created by or through Lessee.

## ARTICLE 16

### DEFAULT BY LESSEE

If Lessee defaults in the payment of any sum of money to be paid under this Agreement and such default continues for a period of ten (10) days after written notice to Lessee of such default; or if Lessee fails to perform any covenant or condition required to be performed by Lessee which failure shall not be remedied within ten (10) days after notice thereof by Lessor to Lessee; or if Lessee shall dissolve, make or commit any act of bankruptcy, or if any proceeding under any bankruptcy, or insolvency statute or any laws relating to relief of debtors is commenced by Lessee, or if any such proceeding is commenced against Lessee and same shall not have been removed within thirty (30) days of the date of the filing thereof, or if a receiver, trustee or liquidator is appointed for Lessee or for all or a substantial part of Lessee's assets with Lessee's consent, or if without Lessee's consent the same shall not have been removed within thirty (30) days of the date of the appointment thereof; or if an order, judgement or decree be entered by a court of competent jurisdiction and continue unpaid and in effect for any period of thirty (30) consecutive days without a stay of execution; or if a writ of attachment or execution is levied on any car and is not discharged within ten (10) days thereafter, Lessor may exercise one or more of the following remedies with respect to the cars.

1. Immediately terminate this Agreement and Lessee's rights hereunder;
2. Require Lessee to return the cars to Lessor at Lessee's expense, and if Lessee fails to so comply, Lessor may take possession of such cars without demand or notice and without court order or legal process. Lessee hereby waives any damages occasioned by such taking of possession whether or not Lessee was in default at the time possession was taken, so long as Lessor reasonably believes that Lessee was in default at such time; Lessee acknowledges that it may have a right to notice of possession and the taking of possession with a court order or other legal process. Lessee, however, knowingly waives any right to such notice of possession and the taking of such possession without court order or legal process;
3. Lease the cars to such persons, at such rental and for such period of time as Lessor shall elect. Lessor shall apply the proceeds from such leasing less all costs and

expenses incurred in the recovery, repair, storage and renting of such cars, toward the payment of Lessee's obligations hereunder. Lessee shall remain liable for any deficiency, which, at Lessor's option, shall be paid monthly, as suffered, or immediately or at the end of the term as damages for Lessee's default;

4. Bring legal action to recover all rent or other amounts then accrued or thereafter accruing from Lessee to Lessor under any provision hereunder;

5. Pursue any other remedy which Lessor may have.

Each remedy is cumulative and may be enforced separately or concurrently. In the event of default, Lessee shall pay to Lessor all costs and expenses including reasonable attorney's fees expended by Lessor in the enforcement of its rights and remedies hereunder, and Lessee shall pay interest at the rate of ten percent (10%) per annum on any amount owing to Lessor from the time such amount becomes due hereunder.

#### ARTICLE 17

##### DELIVERY AT END OF TERM

Lessee shall not deliver the cars prior to the end of the term without the prior written consent of Lessor; provided further, that notwithstanding anything contained herein to the contrary, Lessee shall not load any car leased hereunder during the final 15 days of the term.

At the end of the term, Lessee, at its expense, shall deliver each car to Lessor, or to a subsequent lessee, at the point designated by Lessor at least 180 days prior to the end of the term, empty, free from residue, and in the same good order and condition as it was delivered by Lessor to Lessee, normal wear and tear excepted. Lessee shall, on demand, reimburse Lessor for the expense of cleaning any car that contains residue or such other cost which may be incurred to place a car in the condition described above.

If any car is not redelivered to Lessor or not delivered to a subsequent lessee on or before the date on which the term ends, or in the event that a car so delivered is not in the condition required by this Article 17, Lessee shall pay rental for such day that each car is not delivered as required herein or until each car is delivered in the condition required, at the prorated monthly rental rate set forth in Exhibit "D". Lessee shall pay to Lessor on or before the last day of each month the amount Lessee is obligated to pay to Lessor for such month under this Article 17. In addition to any other indemnity provided herein and any payments to be made to Lessor hereunder, Lessee shall also indemnify and hold Lessor harmless from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, including those asserted by a subsequent lessee arising out of or as a result of such late delivery or failure to deliver in the condition required.

## ARTICLE 18

### WARRANTIES AND REPRESENTATIONS

LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER CONCERNING THE CARS. LESSEE HEREBY WAIVES ANY CLAIM IT MIGHT HAVE AGAINST LESSOR FOR ANY LOSS, DAMAGE, OR EXPENSE CAUSED BY THE CARS OR BY ANY DEFECT THEREIN. During the period of any lease hereunder in which Lessee renders faithful performance of its obligations, Lessor hereby assigns to Lessee any factory or dealer warranty, whether express or implied, or other legal right Lessor may have against the manufacturer in connection with defects in the cars covered by this Agreement.

RMI represents and warrants with respect to any principal who shall become a Lessor hereunder that it is duly authorized to act upon such principal's behalf in respect to this Agreement. RMI represents and warrants to Lessee that registration of this Agreement or the Management Agreements with respect to all persons who may become Lessors hereunder are not, and will not be, required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereof is not required under the Trust Indenture Act of 1933, as amended. RMI agrees to indemnify and hold Lessee harmless from any and all losses, claims, damages, or liabilities to which Lessee may become subject on account of any breach of warranties in this paragraph contained and any and all legal or other expenses incurred by Lessee in connection with investigating or defending any such loss, claim, damage, liability or action.

## ARTICLE 19

### FAILURE TO PERFORM

If Lessee fails to perform any of its obligations hereunder, Lessor, at Lessee's expense, and without waiving any rights it may have against Lessee for such nonperformance, may itself render such performance. Lessee shall reimburse Lessor on demand for all sums so paid by Lessor on Lessee's behalf, together with interest at a rate of 10% per annum, such rate to be reduced, however, to the extent it exceeds the maximum rate permitted by law.

## ARTICLE 20

### RIGHT OF INSPECTION

Lessor or its assignee shall, at any reasonable time, and without interfering with Lessee's operations, have the right to inspect the cars by its authorized representative wherever they may be located for the purpose of determining compliance by Lessee with its obligations hereunder. Lessee shall use its best effort to obtain permission, if necessary, for Lessor or its representative to enter upon any premises where the cars may be located.

## ARTICLE 21

### NOTIFICATION REQUIRED

Lessee shall notify Lessor of any accident or malfunction in connection with the operation of the cars promptly upon becoming aware of such event and to the extent such information is available to Lessee, including in such report the time, place and nature of the accident, the damage caused to any property, the names and addresses of persons injured and of witnesses, and other such information as may be pertinent to Lessor's investigation of such accident. Lessee shall also notify Lessor in writing within three (3) days after any attachment, lien (including any tax and mechanics' liens), or other judicial process attaches to the cars. Within five (5) days after receipt of written demand from Lessor, Lessee shall give Lessor written notice of the approximate location of the cars.

## ARTICLE 22

### ASSIGNMENT OF RIGHTS

Except as otherwise provided in Article 14A and B, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

## ARTICLE 23

### GOVERNMENTAL LAWS

Lessee shall comply with all governmental laws, rules, regulations, requirements and the Interchange Rules (herein collectively referred to as the "Rules") with respect to the use and operation of the cars, and if the cars have any interior lading protective devices, special interior linings or removable parts, the maintenance of such devices, linings or parts. Lessee shall comply with the Rules with respect to its obligation to maintain the cars under Article 8 hereof. Lessor shall comply with the Rules in the event such Rules require a change or replacement of any equipment or appliance on the cars or in case any additional or other equipment or appliance is required to be installed on the cars (herein collectively referred to as "Alterations"). If such Alterations are required, Lessor shall have a reasonable period of time to make such Alterations and return such car to Lessee or replace such car with a substituted car. Lessee, at its expense, shall deliver the cars to such shop or shops and at such time or times as Lessor shall designate for the purpose of making any Alterations. Rental charges for such car or cars shall abate from and after a period of 10 days from the date when such car is so delivered by Lessee to Lessor until it is returned to service or replaced with another car. If a car is either altered or substituted in accordance with this Article 23, the rental rate for such car for each month after such car is altered or substituted with another car shall be determined in accordance with Exhibit D.

ARTICLE 24

ADMINISTRATION OF AGREEMENT

A. Lessee agrees to make available to Lessor information concerning the movement of the cars reasonably required for the efficient administration of this Agreement.

B. The parties hereto recognize and acknowledge that RMI may be acting as agent for certain principals which may be identified by RMI from time to time on the attached Exhibit A, under management agreements, a form of which is attached hereto as Exhibit B. RMI at any time and from time to time shall have the right to add principals to Exhibit A and attach additional forms of management contracts as Exhibit B; provided, however, that notwithstanding the date an amended Exhibit A is delivered to Lessee, such principal shall be a Lessor hereunder effective as of the date the cars owned by the principal and managed by RMI are delivered to Lessee. Lessee agrees to cooperate with RMI and any principal for the purpose of complying with any reasonable requirements of any lender, the Interstate Commerce Commission or the provisions of Article 9 of the Uniform Commercial Code provided such cooperation does not materially affect the rights or liabilities of Lessee hereunder. Except as otherwise provided in Article 14, this Agreement shall be administered by RMI or such other third person or entity as RMI may from time to time identify on the attached Exhibit F; provided, however, that any such assignment to such third person or entity shall not be effective against Lessee until Lessee is so notified of such assignment.

ARTICLE 25

MISCELLANEOUS

A. No modification or waiver of any provision of this Agreement nor consent to any departure by Lessee therefrom shall be effective unless the same shall be in writing signed by both parties, and then such waiver of consent shall be effective only in the specific instance and for the purpose for which given.

B. This Agreement shall be interpreted under and performance shall be governed by the laws of California.

C. In the event the Interchange Rules conflicts with any provision of this Agreement, this Agreement shall govern.

D. All exhibits attached hereto are incorporated herein by this reference.



E. All payments to be made under this Lease shall be made at the Addresses set forth in Article 26.

F. This Agreement is intended to cover all rights to indemnity between the parties hereto.

## ARTICLE 26

### ADDRESSING OF NOTICES

Any notice required or permitted hereunder shall be in writing and shall be delivered to the respective parties hereto by personal delivery thereof or by telegram, telex, telecopier or deposit in the United States mail as certified or registered matter, return receipt requested, postage prepaid, and addressed to the respective parties as follows, unless otherwise advised in writing.

#### Lessee to Lessor:

To: PLM Railcar Management, Inc.  
50 California St., 33rd Floor  
San Francisco, California 94111

Attention: William F. Bryant

#### Lessor to Lessee

To: The Western Pacific Railroad Company  
526 Mission Street  
San Francisco, CA 94105

Attention: Vice President - Finance

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered as of the 10th day of November, 1978.

ATTEST

By Maria Marino  
Asst. Secretary

PLM RAILCAR MANAGEMENT, INC.

By Mark C. Hungerford  
Mark C. Hungerford, President

ATTEST:

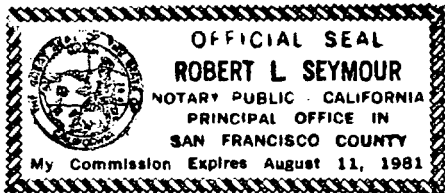
By H. D. Brew  
Secretary

THE WESTERN PACIFIC  
RAILROAD COMPANY

By W. S. Hambro  
Vice President - Finance

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN FRANCISCO )

On this 10<sup>th</sup> day of November, 1978, before me personally appeared Mark C. Hungerford, to me personally known, who, being by me duly sworn says that he is President of PLM Railcar Management, Inc., a subsidiary of PLM, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



(Notarial Seal)

Robert L Seymour  
Notary Public

My Commission expires: 8/11/81

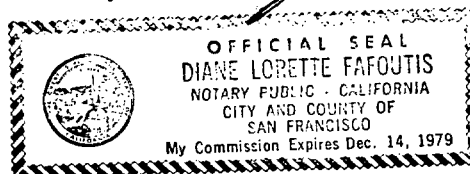
STATE OF CALIFORNIA )

COUNTY OF SAN FRANCISCO )

On this 10<sup>th</sup> day of November, 1978, before me personally appeared R. W. STUMBO, JR., to me personally known, who, being by me duly sworn says that he is VICE PRESIDENT of The Western Pacific Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Diane Lorette Fafoutis  
Notary Public

(Notarial Seal)



My Commission expires: Dec. 14, 1979

EXHIBIT A

PRINCIPALS

Mr. Arthur R. Dubs  
President  
Pacific International  
Enterprises, Inc.  
1133 South Riverside  
PO Box 1727  
Medford, Oregon 97501

	<u>WP NUMBERS</u>	
WP	70001	70031
	70002	70032
	70003	70033
	70004	70034
	70005	70035
	70006	70036
	70007	70037
	70008	70038
	70009	70039
	70010	70040
	70011	70041
	70012	70042
	70013	70043
	70014	70044
	70015	70045
	70016	70046
	70017	70047
	70018	70048
	70019	70049
	70020	70050
	70021	70051
	70022	70052
	70023	70053
	70024	70054
	70025	70055
	70026	70056
	70027	70057
	70028	70058
	70029	70059
	70030	70060

## MANAGEMENT AGREEMENT

## PLM RAILCAR MANAGEMENT, INC.

THIS AGREEMENT made by and between PLM Railcar Management, Inc., a California corporation (hereinafter called "RMI"), and the person executing this Agreement as owner (hereinafter called "Owner").

WHEREAS, Owner has, pursuant to a Covered Hopper Car Purchase Contract (the "Purchase Contract") with PLM, Inc., purchased the covered hopper railroad cars identified in Exhibit "A" attached hereto and incorporated herein by reference (such car or cars purchased by Owner being hereinafter referred to as the "Cars");

WHEREAS, Owner may have financed a portion of the purchase price for the Cars from the proceeds of the borrowing identified in Exhibit "B" attached hereto and incorporated herein by reference (hereinafter referred to as the "Loan") from the institution (hereinafter referred to as the "Lender") identified in said Exhibit "B", and repayable in the periodic payments of principal and interest identified in, and payable at the times and in the amounts referred to in, said Exhibit "B" (hereinafter referred to as "Debt Service");

WHEREAS, RMI is engaged in the business of managing railcars for railcar owners, and Owner desires to retain RMI as agent for the purpose of managing the Cars on Owner's behalf, collecting amounts due to or on behalf of Owner with respect to the Cars and disbursing funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein;

WHEREAS, RMI intends to manage railcars identical in all material respects to the Cars (except that some will have special interior linings and some will not) and to perform for the Owners thereof, under management agreements substantially identical to this Agreement, services substantially identical to those which RMI will perform for Owner hereunder, and Owner desires that the Gross Revenues (as hereinafter defined) and the Operating Expenses (as hereinafter defined) attributable to the Cars be accounted for and combined with the Gross Revenues and Operating Expenses (the "Pool") of all cars managed by RMI under the Management Program, (the "Management Program"), all on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and RMI, intending to be legally bound, hereby agree as follows:

### 1. Engagement of RMI.

Owner hereby engages RMI as agent of Owner to manage the Cars, collect amounts due to or on behalf of Owner with respect to the Cars and disburse funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and RMI accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof.

### 2. Term.

The term of this Agreement and the agency created hereby shall commence as of the date of this Agreement, and shall continue for a period of five years and six months thereafter; provided, however, that, except for Sections 10 and 11, which shall, notwithstanding this proviso, remain in effect with respect to any Car transferred as described in Section 11(a), this Agreement shall terminate with respect to any Car which is withdrawn pursuant to Section 12 hereof, sold, lost or totally destroyed as of the date that such withdrawal is effective, such sale is consummated, or such Car is lost or destroyed; provided further, however, that notwithstanding any termination of this Agreement, whether upon the expiration of five

years and six months after the date of this Agreement or upon the withdrawal, sale, loss or total destruction of any Car, RMI shall continue to be obligated to collect all rental payments, mileage allowances and other sums (including insurance benefits or lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of a Car), and to pay or arrange for payment of all expenses, taxes and other charges on Cars, due for or with respect to periods prior to such termination of this Agreement.

### 3. Duties of RMI.

In consideration of the compensation to be paid to RMI by Owner pursuant to Section 6 hereof, and subject to the agreement of Owner to reimburse RMI pursuant to Section 7 hereof, RMI shall provide and perform the services on behalf of Owner set forth below during the term of this Agreement:

(a) Immediately upon execution, or as soon thereafter as reasonably practicable, take possession of the Cars as agent for Owner for the purpose of managing and operating the Cars, as herein provided.

(b) Use its best efforts to keep such Cars under lease for the term of this Agreement, entering into, as agent for Owner, lease agreements providing for the lease of the Cars to shippers, railroads, or other financially responsible parties for that purpose on terms and conditions which are customary in the industry and taking such steps as may be required to insure that all obligations and duties arising under such leases, whether of lessor or lessees, are performed or complied with in an orderly and timely fashion.

(c) Use its best efforts to insure that all steps are taken which may be necessary to have the Cars registered and accepted by all hauling carriers under the Association of American Railroads ("AAR") as required by the terms of any lease or otherwise.

*RWS*  
*mg* (d) Collect all rental payments and mileage allowances <sup>to Owner, if any,</sup> due with respect to the Cars, identifying itself as agent for that purpose, and account for and remit all sums due to Owner as hereinafter provided.

(e) Terminate leases and recover possession of Cars and enforce all rights of Owner with respect thereto, including the payment of all amounts owed under the lease or otherwise with respect to the Cars as shall be appropriate or necessary in the judgment of RMI exercised in good faith; and institute and prosecute legal proceedings in the name of Owner as is permitted by applicable laws in order to terminate such leases and/or recover possession of the Cars; and, when expedient, settle, compromise and/or release such actions or suits or reinstate such leases.

(f) Use its best efforts to arrange to have the Cars maintained in good condition, which shall be equal to or greater than the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, (ii) any standard set by a lessee, whether by terms of a lease or by other understanding or agreement between lessee and RMI, as agent for Owner, or (iii) any standard set by any insurance policy under which the Cars or any of them shall from time to time be insured, and to arrange for all alterations, modifications, improvements or additions to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be made without the consent of Owner, which consent will be deemed to have been granted if Owner shall not have objected thereto in writing within 30 days after notice to Owner thereof and of the estimated cost thereof.

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with RMI, in its capacity as agent for Owner, being named in each such policy of insurance as a co-insured or additional insured), including, without limitation, insurance against (i) personal liability, including property damage and personal injury, (ii) loss of or damage to the Cars, and (iii) loss of revenues with respect to the Cars; provided, however, that if RMI effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; and, provided further, however, that if RMI determines that the cost of insurance described above is unreasonably high, or cannot be obtained, RMI need not place or acquire such insurance and shall so notify Owner.

(h) Pay in Owner's name all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in RMI's discretion, defend against any such charges and to seek revision or appeal from any assessment or charge deemed improper, all such actions to be in the name of Owner.

(i) Monitor and record movement of the Cars.

(j) Maintain complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives during reasonable business hours.

(k) Paint the Cars such colors and with such designs as RMI may from time to time approve and place reporting marks or such other marks, legends, or placards on the Cars as shall be appropriate or necessary to comply with any regulation imposed by the AAR.

(l) Provide Owner with advice and recommendations concerning the sale of the Cars.

(m) Use its best efforts to collect all sums due Owner, including, without limitation, insurance benefits or railroad indemnity payments, in the event of damage to, or loss or total destruction of, a car during the term of this Agreement and to remit all sums due Owner as hereinafter provided.

(n) Furnish factual information reasonably requested by Owner in connection with Federal, State, Canadian and Provincial tax returns.

(o) If Owner has elected to finance a portion of the purchase price for the Cars from the Loan and any "balloon payment" identified as such in Exhibit "B" hereto will be due within one year prior to the expiration of the term of this Agreement and Owner shall have requested that RMI assist in arranging refinancing for such payment, use its best efforts to arrange refinancing for such balloon payment on the Loan at or prior to the due date for such payment. RMI shall commence its efforts to arrange refinancing for such balloon payment on the Loan at least six months prior to the due date for such payment. Neither RMI nor any of its affiliates shall have any obligation to provide, guarantee or undertake any other liability with respect to the refinancing of such balloon payment.

(p) Perform for Owner such other services incidental to the foregoing as may from time to time be reasonably necessary in connection with the leasing and operation of the Cars.

#### **4. Authority, and Limitations on Authority, of RMI.**

(a) It is recognized that RMI will manage under the Management Program the railcars, including the Cars, purchased by investors who enter into a management agreement substantially identical to this Agreement. The road numbers assigned to the cars managed under the Management Program are set forth in Exhibit "A-1". It is recognized that RMI will receive from owners of other cars in the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that RMI's services for and obligations to and rights with respect to Owner and the owners of other cars in the Management Program are several. RMI will not act or purport to act for or in the name of the Pool, the Management Program or the owners of cars in the Management Program collectively or as an entity; it being expressly understood that any actions taken on behalf of the owners of cars in the Management Program will be taken as agent for such owners, severally and individually, either naming such owners or naming RMI as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this Agreement, the Management Program and the Pool are not intended to create a partnership, joint venture or other entity among Owner, other owners of cars in the Management Program, RMI and/or any affiliate of RMI. RMI shall not take any action or engage in any course of dealing, or so permit any affiliate of RMI, which would suggest or create an inference that there is any understanding or agreement between owners of cars in the Management Program or that such owners are acting collectively or as an entity and RMI shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) RMI shall not have any authority to (i) offer for sale, contract or agree to sell or sell any Cars except as Owner may from time to time hereafter expressly request or direct; or (ii) make any alterations,

modifications, improvements or additions to the Cars of the type referred to in Section 7(d) without the consent (either express or inferred, as provided in Section 3(f)) of Owner.

##### 5. Owner's Revenues, Expenses and Net Earnings

(a) The actual Gross Revenues (as hereinafter defined) derived from the operation of the Cars and the actual Operating Expenses (as hereinafter defined) shall be accounted for and combined together with all Gross Revenues and Operating Expenses derived from and incurred by all cars managed under the Management Program.

*raws*  
*new*  
(b) As used in this Agreement, the term "Gross Revenues" shall mean all income to Owner (unreduced by any expenses or costs) derived from the ownership, use and/or operation of the Cars including, but not limited to, minimum rentals and mileage charges collected under leases, mileage allowances, if any, <sup>due to Owner, if any</sup> and payments received by Owner under Section 9(c). "Operating Expenses" shall mean all expenses and costs incurred in connection with the ownership, management, use and/or operation of Cars, including, but not limited to maintenance; repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(f); painting; costs of modifications and improvements which are not alterations, modifications, improvements or additions of the type described in Section 7(d); accounting fees incurred pursuant to Section 13(d); legal fees incurred in connection with enforcing lease rights or repossessing Cars; insurance (and, if such insurance has been effected under a blanket insurance policy, or insurance policy covering the Cars and other cars of other owners, Owner's pro rata share of such insurance cost, it being understood that RMI will use its best efforts to allocate to Owner's Cars only such portion of such insurance cost as is attributable to such Cars); charges, assessments, or levies imposed upon or against Cars of whatever kind or nature; losses from liabilities which are not the responsibility of Owner under Section 7(g); and Owner's pro rata share of that portion of ad valorem, gross receipts and other property taxes which are levied against all railcars bearing "PLMX" reporting marks and determined by RMI to be attributable to the cars in the Management Program (it being understood that it may not be possible to make an exact allocation of such taxes but that RMI will use its best efforts to allocate to the cars in the Management Program only such portion of the aggregate of such taxes as are attributable to such cars). Gross Revenues and/or Operating Expenses attributable to a calendar quarter which are received or paid after the date of payment for such quarter shall be included in subsequent quarterly distributions and accounted for as Revenues or Expenses of that subsequent quarter; provided, however, that if such items are received or incurred within one year of the date of payment for that quarter to which they relate and the amount involved exceeds \$500 per Car, the items shall be accounted for with the Revenues and expenses for the quarter to which such items relate.

(c) Owner's Gross Revenue and Operating Expenses for any fiscal period shall be the product of (i) Gross Revenues derived from all cars managed under the Management Program or Operating Expenses incurred by or with respect to all cars managed under the Management Program, as the case may be, multiplied by (ii) a fraction the numerator of which is the product of the number of Cars multiplied by the number of days in such fiscal period that the Cars are managed under the Management Program and the denominator of which is the product of the total number of cars managed under the Management Program multiplied by the number of days in such fiscal period that such cars are managed under the Management Program. The number of cars (or Cars, as the case may be) managed under the Management Program shall be the number of cars actually managed under the Management Program from time to time during such fiscal period and if any cars are destroyed, lost, sold, disposed of or withdrawn from the Management Program during such fiscal period, any computation under this Section 5(c) shall reflect such destruction, loss, sale, disposition or withdrawal; provided, however, that (x) notwithstanding that the owner of any cars managed under the Management Program shall have entered into a management agreement with RMI, the cars owned by such owner (which may be Owner), shall not be considered to be managed under the Management Program until such cars shall first have been delivered to a lessee thereof and (y) there shall not be any adjustment of computations under this Section 5(c) on account of the temporary withdrawal from service of any car for repairs, maintenance or reconstruction.

(d) As used in this Agreement, the term "Net Earnings" shall mean the Gross Revenues attributable to the Cars less the sum of (i) the amount of the Operating Expenses attributable to the Cars; (ii) all compensation due and payable to RMI under Section 6 not theretofore paid; (iii) such reserves as RMI



shall, in its sole discretion, have reasonably created to provide for the efficient administration of this Agreement, for payment of accrued expenses not yet due, for the management of the Cars, or for expenses relating to the Cars arising or payable after the termination or expiration of this Agreement; and (iv) any storage and transit costs payable by Owner under paragraph 6 of the Purchase Contract.

#### 6. Compensation.

As compensation to RMI for the performance of services hereunder, Owner shall pay to RMI the following amounts, which amounts shall be payable, in the case of Section 6(a), on the first day of each month for which they are due, in the case of Sections 6(b) and 6(c), on the 1st day of each month for which they are due and, in the case of Section 6(d), on the last day of each calendar quarter for which they are due:

(a) *Base Compensation To RMI.* Owner shall pay to RMI a management fee equal to \$     per Car per month. For any partial calendar month during the term of the Agreement, the fee shall be pro-rated on a daily basis.

(b) *Additional Compensation to RMI.* If the mileage allowances attributable to the Cars exceed the fixed minimum rental per Car per month for any month under a lease covering the Cars, Owner shall pay to RMI for each month during the term of this Agreement, an additional management fee equal to     percent (     %) of the mileage allowance per Car in excess of the fixed minimum rental per month.

(c) *Servicing Fee to RMI.* If Owner shall have requested RMI to make the special distributions of Net Earnings provided for by Section 7(a), Owner shall pay to RMI an additional management fee equal to \$     per Car per month, commencing with the month for which Net Earnings are first so distributed and ending with the month for which the last such distribution is made.

(d) *Refinancing Fee to RMI.* If, as provided in Section 3(o), RMI shall have arranged refinancing of a balloon payment on the Loan and Owner shall have elected to accept such refinancing, Owner shall pay to RMI a refinancing fee equal to     % of the principal amount refinanced, one-quarter of which fee shall be payable on the closing of such refinancing, one-quarter on the last day of the calendar quarter following the quarter in which such closing occurred and one-quarter on the last day of each of the next two calendar quarters.

#### 7. Distribution to Owner of Net Earnings; Payment of Costs and Expenses.

(a) *Special Distributions of Net Earnings.* If (i) Owner has financed a portion of the purchase price for the Cars from the Loan and Debt Service is due on either the first or the last day of each month and (ii) Owner has requested that RMI assist Owner in providing for timely payment of Debt Service, RMI shall, not later than three full business days prior to the time that Debt Service for any month is due and payable, distribute to Owner, as hereinafter provided, the lesser of (A) RMI's then best estimate of the Net Earnings attributable to the Cars for the preceding month, in the case of Debt Service due on the last day of each month, and the second preceding month, in the case of Debt Service due on the first day of each month, and (B) the Debt Service then to be due and payable. Such distribution shall be made by transfer to the Lender (which transfer may be made by sending by regular first-class mail a check for the amount transferred), in the name of Owner, of the amount so distributed. If the amount distributed for the benefit of Owner pursuant to the first sentence of this Section 7(a) is less than the full amount of the Debt Service then to be due and payable, RMI shall, not later than three full business days prior to the time that Debt Service for such month is due and payable, advise Owner in writing (which advice may be sent by first-class mail) of the existence and amount of such deficiency. Distributions pursuant to this Section 7(a) shall commence for the month during which Owner shall request that such distributions be made (which request may be made by execution of the request form on the signature page of this Agreement or by written notice to RMI) and shall terminate after the distribution for the month during which, by written notice to RMI, Owner shall request that no further such distributions be made.

(b) *Regular Distributions of Net Earnings.* Within ninety (90) days after the end of each calendar quarter, RMI shall distribute to Owner the excess of (i) the Net Earnings attributable to the operation of the Cars during each quarter over (ii) the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner by RMI pursuant to Section 7(a).

(c) *Payment of Operating Deficits.* Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the amount by which Net Earnings for a calendar quarter, reduced by the Net Earnings, if any, for such quarter distributed for the benefit of Owner by RMI pursuant to Section 7(a), shall be less than zero.

(d) *Payment for Special Improvements.* The cost of any alterations, modifications, improvements or additions which are required by the AAR, Department of Transportation or other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements and are consented to by Owner shall be the sole responsibility of Owner. RMI shall have the right to require Owner to pay the approximate cost thereof to RMI, upon ten (10) days prior written notice. Upon completion, RMI shall notify Owner of the exact amount of such costs, and in the event that Owner has already paid more than such cost, RMI shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to RMI the amount of such difference.

(e) *Payment for Additional Insurance.* If RMI determines, as provided in Section 3(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and Owner elects to purchase such insurance, the cost thereof shall be the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the cost of any such insurance placed or purchased by Owner through RMI.

(f) *Payment For Certain Property Damage.* The cost of repair of damage to any Car (other than the cost of repairs which RMI determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payments) shall be solely for the account and benefit of Owner (and shall not be included within the term "Gross Revenues"). RMI shall have the right to require Owner to pay to RMI, upon ten (10) days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Owner or, at RMI's election, such portion of such cost as RMI believes will not be covered by any such payments which may be received by RMI (as coinsured or additional insured, as provided in Section 3(g)) to cover the cost of such damage (it being understood that RMI may apply to such cost of such repair any payments so received by RMI to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by RMI and applied to payment of the cost of such damage, RMI shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has already paid more than the amount of such costs not paid from such payments received and applied by RMI to such repair, RMI shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from such payments received and applied by RMI to such repairs, the Owner shall promptly pay to RMI the amount of such difference. RMI shall promptly remit to Owner any payments to cover such damage to such Car which are received by RMI and not applied to payment of the cost of repair of such damage.

(g) *Payment of Uninsured Losses.* Losses from third party liability for bodily injury or property damage caused by any Car which are (i) not covered by insurance and (ii) are in excess of the lesser of (x) \$25,000 per occurrence per Car for liability for bodily injury and \$25,000 per occurrence per Car for liability for property damage and (y) the amount of the deductible(s) under any liability insurance for bodily injury and property damage on the Car are the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the amount of such liability.

(h) *Receipts and Payments as Acts of Owner; Obligations of Owner.* In collecting or receiving any Gross Revenues and in paying or disbursing any Operating Expenses RMI is acting solely as agent for Owner. The provisions of Sections 3, 5 and 7 of this Agreement shall not be understood to diminish or modify the rights of Owner to receive Gross Revenues or the obligation of Owner to pay Operating Expenses or Debt Service.

## 8. Indemnification.

Owner shall defend (if such defense is tendered to Owner), indemnify and hold RMI harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against RMI as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars, including, without limitation, all those arising out of the sole active negligence of RMI, claims for injury to or death of persons, loss of or damage to property (including the Cars) and economic loss due to the unavailability for use of the Cars; provided, however, that Owner shall not defend, indemnify or hold RMI harmless from and against, and RMI shall not be exculpated from, any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from bad faith, recklessness, or willful misconduct of RMI.

## 9. Right of First Refusal; Exclusive Sales Agency; Sublease of Cars.

(a) *Right of First Refusal.* During the term of this Agreement and for a period of five months thereafter, if Owner shall have received from a third party ("Offeror") a bona fide offer (the "Offer") for the purchase of any or all of the Cars, and if (i) either (x) Offeror is a competitor of RMI or any of its affiliates in the business of originating, arranging, brokering, syndicating or dealing in leased equipment or the business of managing railcars or other railroad equipment or (y) Owner actively initiated the transaction or actively solicited the Offer and (ii) Owner desires to accept the Offer, Owner shall first obtain a copy of the Offer in writing signed by the Offeror and forward a true copy thereof to RMI. RMI shall, in such cases (but no others), thereupon have the first option for a period not to exceed ninety (90) days after receipt of a copy of the Offer from Owner, to purchase all or any of the Cars upon the same terms and conditions as set forth in the Offer.

(b) *Exclusive Sales Agency.* During the term of this Agreement and for a period of five months thereafter, RMI shall have the exclusive right to sell the Cars. Except in case of any sale or other disposition of a Car to RMI (whether pursuant to Section 9(a) or otherwise) or any of its affiliates (that is, any company, person or firm controlling, controlled by, or under common control with, RMI) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to RMI upon the sale of a Car a sales commission equal to the sum of (i)        percent ( %) of the sale price and (ii)    % of the sale price in excess of the total purchase price of the Car provided under paragraph 6 of the Purchase Contract (including the \$100 per Car provision for storage and transit costs contemplated by said paragraph 6.

(c) *Sublease of Cars.* Owner recognizes and acknowledges that an affiliate of RMI may assist a lessee of Owner's Cars in subleasing such Cars or such affiliate itself may sublease the Cars from such lessee and further sublease to an independent third party, and, in so doing, will be acting for and on behalf of itself, and not on behalf of Owner. Owner further recognizes and acknowledges, and consents to, such affiliate dividing the gross revenue (as defined in this Section 9(c)) from such assistance or sublease and re-sublease equally between such affiliate and the Owner. The term "gross revenue" as used in this Section 9(c) shall mean, as the case may be, (i) any commission paid to such affiliate for assistance in subleasing the Cars or (ii) in the case of a sublease and re-sublease, the sum of (A) the difference between the rental rate received from such third party sublessee and the rental rate paid to the lessee of Owner's Cars and (B) any commission payable to such affiliate in connection therewith. Anything herein to the contrary notwithstanding, RMI shall not permit any affiliate of RMI to sublease, or assist in subleasing, Cars, if such action would cause loss or recapture of any allowable investment tax credit claimed with respect to the Cars.

## 10. Subordination.

This Agreement and RMI's authority and rights hereunder are subject to the lien and security interest upon the Cars and revenues generated by the Cars held by any Lender to whom Owner has granted a security interest in the Cars; provided, however, that all such liens and security interests are subject to any lease entered into during the term of this Agreement (including any rights of the lessees thereunder referred to in Section 11) and to RMI's right to collect Gross Revenues accruing during the term of this Agreement until such time as sums due RMI hereunder as of the later of the date of default under the terms of any security agreement or repossession of the Cars pursuant to such security agreement are paid.

## **11. Dealings With Lessees.**

(a) It is intended that leases of cars managed under the Management Program will cover several or all of the cars so managed under the Management Program at any time. Unless the lessee of such cars shall be willing to pay rental to several lessors (and such lessee may decline, in its sole discretion, to pay rental to more than a single lessor), any purchaser, foreclosing mortgagee, donee or other transferee of any car subject to such lease (even though such car is not then managed under the Management Program) shall, until the expiration or termination of such lease, acknowledge RMI as such purchaser's, foreclosing mortgagee's, donee's or other transferee's agent for the purpose of receiving rentals under such lease (which rentals RMI shall remit, forthwith upon receipt, without deduction or charge); provided, however, that any foreclosing mortgagee or transferee of such foreclosing mortgagee and RMI shall select a person or entity, which may be RMI, as agent of such foreclosing mortgage or transferee of such foreclosing mortgagee for the purpose of receiving rentals under such lease.

(b) In the event that RMI determines, in its sole discretion, that any purchaser, foreclosing mortgagee, donee or other transferee of any car which is subject to the leases referred to in Section 11(a) and which is not managed under the Management Program is not capable of performing the duties and obligations of a lessor under such leases in accordance with the terms thereof, then RMI may require the transfer to RMI of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the cars of such person from such leases and substitute thereunder cars identical to the cars so withdrawn.

## **12. Withdrawal in Case of Special Improvements.**

In the event that any alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be required and Owner shall not have consented to the making thereof, Owner may terminate this Agreement and withdraw from participation in the Management Program. In the event that Owner shall not have consented to the making of any such alteration, modification, improvement or addition and shall not have terminated this Agreement, from and after the effective date of any law, regulation or requirement prohibiting, limiting or otherwise affecting the leasing, use, ownership, operation, or maintenance of railway cars, such as the Cars, which have not been so altered, modified, improved or added to, the Cars will be deemed to have been withdrawn from the Management Program and all costs associated therewith (including maintenance and storage costs) will be the sole responsibility of Owner and Owner shall receive only Gross Revenues and Net Earnings directly and actually derived from or attributed to the Cars.

## **13. Reports.**

(a) Not later than 90 days after the end of each calendar quarter other than the fourth calendar quarter, RMI will distribute to Owner an unaudited report showing, in reasonable detail, the Gross Revenues, Operating Expenses and Net Earnings for such quarter, including the computation and the allocation of any property taxes and the computation of Owner's pro rata share of any items. Such reports shall also show the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner pursuant to Section 7(a).

(b) Within 60 days after the close of each calendar year, RMI will distribute to Owner a report showing for the fourth calendar quarter and such year (stated separately) the same information reported on the quarterly report distributed pursuant to Section 13(a).

(c) Not later than 60 days after the close of Owner's taxable year (which will be deemed to be the calendar year unless Owner shall otherwise notify RMI in writing) RMI will deliver to Owner a statement setting forth all information (including computation of depreciation and amortization deductions computed on the same or similar bases as those set forth in the analytic models contained in the memorandum of RMI dated \_\_\_\_\_ relating to the Management Program) reasonably necessary in connection with the preparation of Owner's Federal income tax returns.

(d) Within 90 days after the close of each calendar year RMI will deliver to Owner a report of such independent certified public accountants as are then acting as accountants to RMI and its affiliates, as to

review (which review will not constitute, and is not intended to be equivalent to, an audit of the operation of the Cars) of the operations of the Management Program, the mathematical correctness of the computations made by RMI in the allocation of Gross Revenues, Operating Expenses and Net Earnings and the conformity of the accounting procedures followed by RMI to the obligations and duties of RMI under this Agreement.

#### 14. Use of Cars.

RMI shall enforce the obligations of the lessees under the leases presently covering the Cars (the "Leases") so that the Cars will not be used predominantly outside the United States within the meaning of Section 48(a)(2)(A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder. RMI shall cause each lease for the Cars entered into, or arrangements for the use of the Cars made, subsequent to the termination of any of the Leases to contain provisions regarding the identity of the lessees or sublessees of the Cars and the locations of use of the Cars so as to avoid recapture of any allowable investment tax credit claimed with respect to the Cars.

#### 15. Notices.

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail postage prepaid addressed to the other party as follows:

If to RMI: PLM Railcar Management, Inc.  
50 California Street  
San Francisco, California 94111  
Attn: Mr. Charles J. Scarcello

If to Owner: To the address set forth on the signature page to this Agreement;

and any party may change such address by notice given to the other party in the manner set forth above.

#### 16. Miscellaneous.

(a) *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of California.

(b) *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) *Headings.* Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) *Amendment.* No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) *Successors And Assigns.* The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or transfer of any of the Owner's rights hereunder whether by operation of law or otherwise shall be valid and effective as against RMI without the prior written consent of RMI.

(f) *Force Majeure.* Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including and without limitation acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.

(g) *Other Customers of RMI.* It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit RMI from providing the same or similar services to any person or

organization not a party to this Agreement. In particular, RMI shall be entitled to manage identical cars not managed under the Management Program under a similar management agreement with another owner; provided, however, that if RMI owns, or manages for any other party, railroad cars which are similar to the Cars, and the total of such cars (including the Cars) available for lease exceeds the demand for such cars, the Cars shall be treated no less favorably than any other cars RMI owns or manages. Owner recognizes and acknowledges that it is RMI's intention to give priority to those cars which have been off-lease and available for the longest period of time.

(h) *Waiver.* The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(i) *Severability.* If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

PLM Railcar Management, Inc.

By.....

OWNER:

.....

By.....

Address.....

.....

.....

Dated: ..... 19

REQUEST FORM PURSUANT TO SECTION 7(a):

Owner hereby requests RMI to make the special distributions provided for in Section 7(a) of this Agreement.

By.....

EXHIBIT C

NUMBER AND DESCRIPTION OF CARS

Number of Cars:

Two Hundred and Forty (240)

Description of Cars:

4,000 cubic foot, 100-ton high-side open-top hopper railcars, built by Greenville Steel Car Company according to specification number H-30102-A, numbered WP 70001 through 70240.

EXHIBIT D

DELIVERY; RENTAL RATE

I. ANTICIPATED DELIVERY PERIOD:

February/March, 1979

II. RENTAL RATE:

(1) Article 5A

The monthly rental payment per car shall be equal to 1.20% of the acquisition cost (defined for purposes of this Exhibit as the manufacturer's invoice cost) of such car. Assuming a cost of \$32,750 per car, the rental will be \$393.00 per car per month.

(2) Articles 9B and 23

The monthly rental payment per car for an altered or substituted car shall be as follows:

(a) Altered Car: The product of (i) the sum of the original acquisition cost of the car and the alter cost paid or incurred by Lessor and (ii) 1.20%.

(b) Substituted Car: The product of (i) the acquisition cost of such substituted car and (ii) 1.20%.



EXHIBIT E

ACKNOWLEDGEMENT OF ASSIGNMENT OF LEASE

The undersigned, The Western Pacific Railroad Company, a corporation, is Lessee under a lease (the "Lease") dated October 1st, 1978, between PLM Railcar Management, Inc., a subsidiary of PLM, Inc., a California corporation, as Lessor (and as principal and/or agent for, and to the extent of, the parties listed on Exhibit A to the Lease, or as Exhibit A may be amended from time to time by Lessor alone by the addition of principals thereto, under management contracts, a form of which is attached to the Lease as Exhibit B), and the undersigned, as Lessee, with respect to certain railroad cars (the "equipment"). The undersigned hereby acknowledges receipt of a copy of an assignment of the Lease from the Lessor to \_\_\_\_\_ ("Assignee").

As an inducement to Assignee to partially finance purchase of the equipment being leased by Lessor to the undersigned pursuant to the Lease, the undersigned hereby agrees that:

(1) The undersigned will pay all rentals and other amounts to be paid by Lessee under the Lease directly to the Assignee at \_\_\_\_\_ or at such other address as may be furnished in writing from time to time to the undersigned by the Assignee.

(2) Assignee shall be entitled to the benefits of and to receive and enforce performance of all the covenants to be performed by the undersigned under the Lease as though the Assignee were named therein as Lessor, but Assignee shall not, by virtue of the assignment, or this instrument of acknowledgement, be or become subject to any liability or obligation under the Lease. In accordance with the terms of the Lease, so long as the undersigned is not in default under the Lease, the undersigned's interest in the equipment shall not be subordinated to Assignee's interest therein.

(3) The undersigned shall not, without the prior written consent of Assignee, amend, terminate or modify the Lease or take any action or omit to take any action, the taking or omission of which might result in an alteration or impairment of the Lease, except to the extent, if any, that the undersigned is otherwise entitled to do so as a result of the default thereunder of the Lessor.

Dated as of \_\_\_\_\_, 19\_\_.

The Western Pacific Railroad Company:

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

10/18/78 RMI / WP

EXHIBIT F  
ADMINISTRATION OF LEASE

EXHIBIT G

CERTIFICATE OF ACCEPTANCE OF  
RAILROAD CAR

This Certificate relates to the railroad cars listed below leased by PLM Railcar Management, Inc., to The Western Pacific Railroad Company under a Lease Agreement for Railroad Cars dated October 1, 1978 into which this Certificate is incorporated (by Article 3c thereof) as Exhibit G.

Railcar Numbers

Lessee hereby certifies that the railcars listed above were delivered to and received by Lessee, inspected, determined to be fit and suitable for operation within the meaning of the Interchange Rules; and Lessee hereby certifies its acceptance of the railcars as of \_\_\_\_\_.

Executed: \_\_\_\_\_

Attest:

The Western Pacific Railroad Company

By \_\_\_\_\_

(Title): \_\_\_\_\_ (Title): \_\_\_\_\_

CERTIFICATE OF NOTARY PUBLIC

Washington, D.C.

I, Dorothy V. Loftus, a duly appointed Notary Public of the District of Columbia, hereby certify that I have compared the attached document with the original document, and I have determined that it is a true and correct copy in all respects.

Dated: Feb. 22, 1979 Dorothy V. Loftus  
NOTARY PUBLIC

My commission expires: August 31, 1983